In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 111

DEPARTMENT OF MENTAL HYGIENE OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

EVELYN KIRCHNER, Administratrix of the Estate of ELLINOR GREEN VANCE,
Respondent.

Reply to Brief of Respondent

On Writ of Certiorari to the Supreme Court of the State of California

THOMAS C. LYNCH
Attorney General of the State of California

HAROLD B. HAAS
Assistant Attorney General of the State of California

ELIZABETH PALMER
Deputy Attorney General of the State of California
6000 State Building
San Francisco 2, California

Attorneys for Petitioner

JOHN CARL PORTER
ASHER RUBIN
Deputy Attorneys General of the State of California

Of Counsel

BORG PRINTING COMPANY OF CALIFORNIA, 180 FIRST STREET, SAN FRANCISCO 5

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Petitioner's Brief in Reply to Respondent's Brief will be directed to two points:

1. Reply to respondent's belated challenge to the Court's jurisdiction; and

2. Correction of respondent's misstatement of the California civil commitment law and the resultant erroneous conclusion.

I

THIS COURT HAS JURISDICTION BECAUSE THE COURT BELOW INVALIDATED A STATE STATUTE SOLELY ON FEDERAL GROUNDS

Respondent in opposing the Petition for Certiorari did not question the jurisdiction of this Court. Now in her brief on the merits, she denies that this Court has jurisdiction. It is asserted that the California Constitution contains an adequate state ground for the decision. Apparently this was not the view of the California Supreme Court.

For that Court explicitly based its decision solely upon the "equal protection clause." (R 56, 58)

Since that court found *Department of Mental Hygiene v. Hawley*, 59 Cal.2d 247, 379 P.2d 22 (1963) dispositive of the issue before it, its language here must be taken in conjunction with that used in *Hawley*. (R 55) In that case, although appellant Hawley contended the statute violated both the California Constitution and the Fourteenth Amendment of the United States Constitution, the court explicitly based its holding solely on "The Fourteenth Amendment." The court stated:

> "The Fourteenth Amendment, in declaring that a State shall not "deprive any person of life, liberty or property without due process of law," gives to each of these an equal sanction; it recognizes "liberty" and "property" as co-existent human rights, and debars the States from any unwarranted interference with either.' (*Coppage v. Kansas* (1915) 236 U.S. 1, 17 . . . It has further been declared that 'Life, liberty, property, and the equal protection of the law, grouped together in the Constitution, are so related that the deprivation of any one of those separate and independent rights may lessen or extinguish the value of the other three.' (*Smith v. Texas* (1914) 233 U.S. 630 . . ." id at p. 256.

The California Constitution has no Equal Protection Clause and no Fourteenth Amendment.[1]

The California Court was fully cognizant of Article 1, sections 11 and 21 of the California Constitution which require uniform operation of laws and the usual privileges or immunities provision. Respondent's quotation from *Department of Mental Hygiene v. McGilvery*, 50 Cal.2d 742, 329 P.2d 689 (1958) (Resp. Br. 2) amply demonstrates the California Court's ability to ground its decisions on both the provisions of the California Constitution and the Federal Constitution where it considers that both are applicable.

In this case it did not. We submit that the California court, because it felt impelled to do so, deliberately based its decision solely on the provisions of the Federal Constitution, implying that its decision could not be sustained under the California Constitution.

Respondent has drawn to the Court's attention *Indiana ex rel. Anderson v. Brand*, 303 U.S. 96, 98 (1937) (Resp. Br. 3-4) in which this Court said: "We cannot refuse jurisdiction because the state court might have based its decision, consistently with the record upon an independent and adequate non-federal ground."[2]

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1. See *Bryant v. Zimmerman*, 278 U.S. 63, 69 (1928) where this Court established the federal question necessary to its jurisdiction by noting the reliance of the court below on the equal protection clause, the citation of federal authorities and the absence of an equal protection clause in the state constitution. Compare *Perkins v. Benguet Mining Co.*, 342 U.S. 437, 443, n.4 (1951).

2. See also *Stroble v. Calif.*, 343 U.S. 181, 194 (1952); *Takahashi v. Fish Comm'n.*, 334 U.S. 410, 414, n.4 (1948); *Steele v. L. & N.R. Co.*, 323 U.S. 192, 197, n.1 (1944); *Internat. Steel Co. v. Surety Co.*, 297 U.S. 657, 665-666 (1935); *Grayson v. Hodges*, 267 U.S. 352, 358 (1924), where this Court noted that the possibility of resolution of the case on an independent state ground does not disturb this Court's jurisdiction where the decision below in fact rested on a federal ground.

Moreover, to accept respondent's suggestion that an independent state ground can be tortured from the opinion below would still leave the decision at large with its erroneous constitutional language unexamined by this Court, as a threat to the similar statutes of 42 other states.

Since the validity of a state statute has been drawn in question and the state court found it invalid solely on federal grounds, regardless of which party prevailed, this court has jurisdiction by way of certiorari.[3]

II

"DANGEROUS INSANITY" IS NOT A PREREQUISITE FOR COMMITMENT TO CALIFORNIA MENTAL HOSPITALS: THE PATIENT'S OWN NEED FOR CARE AND TREATMENT IS SUFFICIENT

Respondent asserts that all patients at state mental hospitals such as Agnews State Hospital are and must be dangerously insane. (Resp. Br. 6-14) Relying solely on this erroneous assertion she concludes that state hospitals are primarily for the protection and benefit of the public and therefore the full expense must be borne by the state. (Resp. Br. 7) In other words, civil patients are no different from those patients charged with or convicted of a crime. Cited as authority that only the dangerously insane may be committed to state hospitals, is a 1915 case, *Matter of Harcourt*, 27 Cal. App. 642, 150 Pac. 1001 (1915) (Resp. Br. 9-10).

Harcourt passed on a statute requiring an adjudication that ". . . [such person] is so far disordered in mind as to endanger health, person, and property *and that it is dangerous* for life, health, person and property for such person [the patient] to be at large . . ." (Emphasis added.) (27 Cal.

3. 28 U.S.C. § 1257(3).

App. 642, 645). This was the law in 1915. This is not the law now. Mental hospitals today are primarily treatment centers, not custodial institutions. (Pet. Br. 24-28)

At present one may be classified as mentally ill and may be hospitalized if he is merely of such mental condition as to require supervision, care, treatment *or* restraint *or* is likely to be dangerous to himself or others. Welfare & Institutions Code, sections 5040 and 5100. In addition Welfare & Institutions Code section 6500 provides, "There are in the State the following state hospitals for the care and treatment of the insane, the mentally ill and the *mentally disordered:* . . . Agnews State Hospital . . ." (Emphasis added.) No longer need a civil patient manifest anti-social tendencies.

Respondent implies that all of the mentally disordered who are not dangerously mentally ill are committed to the care and custody of counselors in mental health. Welfare & Institutions Code Section 5076. Counselors in mental health act only in a supervisory capacity under the direction of the court. (§ 5076) Their role is similar to that of probation officers. This is only one of several alternatives available to the court in appraising what is best for the patient. See Welfare & Institutions Code section 5100. More significant is, that only three of the 58 counties in California have such counselors.

An ever increasing number of the patients in the California State Hospitals are voluntarily admitted for care and treatment. Welfare & Institutions Code section 6602. Charges are in accordance with section 6650 but admission is not dependent on pay status. These persons are not raving

maniacs but recognize their illness and seek treatment for it as any sick person might do.

Dated: San Francisco, California,
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Respectfully submitted

THOMAS C. LYNCH
Attorney General of the State of California

HAROLD B. HAAS
Assistant Attorney General of the State of California

ELIZABETH PALMER
Deputy Attorney General of the State of California

Attorneys for Petitioner

JOHN CARL PORTER
ASHER RUBIN
Deputy Attorneys General of the State of California

Of Counsel